

TESTIMONY OF TOM FALIK, ON BEHALF OF
THE CONNECTICUT ASSOCIATION OF HOME CARE REGISTRIES
IN OPPOSITION TO SENATE BILL 990
AN ACT CONCERNING CONSUMER PROTECTION IN THE HOME CARE INDUSTRY

Good afternoon Senator Gomes, Representative Tercyak and the other members of the Labor & Public Employees Committee. Thank you for the opportunity to provide testimony on this important issue. My name is Tom Falik, and I am the president of the CT Association of Home Care Registries (CAHCR). Our Association is comprised of Referral Registries that are registered with the DCP, and provide independent caregivers to CT's seniors and people with disabilities.

SB-990 is Another Attempt to Undermine the Registry Business Model

Homecare Registries **have existed in CT for over 80 years**, and they serve a critically important function in the care of seniors and people with disabilities. They **act as matchmakers** to help **sole proprietor caregivers** find work with individuals needing care. The Registry model is one of several choices available to elderly and disabled citizens and their families in Connecticut.

In each of the past three legislative sessions, virtually identical bills have been introduced **which tried to take the Registry option away from CT citizens, by creating the fiction that Registries were the employers of all caregivers that they placed**. Those bills were not successful because removing choices for people and forcing them to use a more costly option is not the best policy. **Much of the language contained in SB-990 is taken directly from those defeated Bills**, but SB-990 takes a different approach, purporting to protect the consumer from being the employer of the caregiver, rather than deeming the Registry to be the employer. It tries to sound like a consumer protection bill, but once again, the main effect of this Bill is to undermine the Registry business model.

Regrettably, the Legislature is again being pulled into what is essentially a **"turf battle"** between employee-based homecare Agencies and Referral Registries. Some employee-based Agencies are looking to the legislature to shut down their competition and remove that choice from consumers, merely because Registries **are lower-priced competitors**.

Registries are an important option for consumers. The Florida Legislature did its own study, when faced with demands by employee-based Agencies to eliminate Registries, but instead determined that **Registries were critically important to elder care in Florida**. If you would like, I can provide you copies of this study.

Registries are not Opposed to Consumer Protection for Seniors

CAHCR has **consistently supported appropriate consumer protection** for seniors:

1. In 2011, CAHCR was one of the primary advocates for **PA 11-230**, which required all Registries, for the first time, to **register with DCP** as Homemaker-Companion Agencies and to make certain disclosures for the benefit of consumers.
2. Since then, CAHCR has supported other consumer protection statutes, including participating on the **Criminal Background Check Task Force** and supporting **PA 13-88** to tighten up DCP disclosure requirements.
3. When the CT DOL and this Committee raised the issue of consumers needing protection in case an independent contractor caregiver had an accident in a consumer's home, I spent over a year researching and arranging for **Occupational Accident Insurance**, which is similar, though not as comprehensive as, workers' comp. These policies have now been adopted by certain other Registries.

SB-990 is not the Best Way to Address These Issues

1. SB-990 exempts consumers from liability for **workers' comp, unemployment coverage AND WAGES**.
 - a. The **inclusion of wages** in these exemptions **completely undermines the Registry concept**, without increasing protection for the consumer.
 - b. These exemptions contained in SB-990 would be **in conflict with, and would not supersede, the Federal FLSA**, which would still contain these requirements.
 - c. There is no need for legislation to protect consumers of services from employee-based Agencies, because it is obvious that the Agency, not the consumers, has that liability.
 - d. Only clients of Registries would be affected by these exemptions, and **it makes no sense to exempt wages**, because anyone hiring a caregiver through a Registry is doing so with the specific understanding that the consumer is directly paying the caregiver.
2. There are **other ways** that similar protections **could have been effectively structured**:
 - a. If CT had a **robust independent contractor statute**, as do some other states such as Florida, then caregivers electing to be independent contractors could effectively waive unemployment benefits (in exchange for higher direct pay), and consumers could be statutorily protected from unemployment liability.
 - b. If CT had a **better developed workers' comp insurance market** for individual purchasers, more individuals would be willing to make their caregivers employees and provide workers' comp coverage.
 - c. In order to provide greater protection to consumers, some Registries have recently developed robust programs where the **consumer hires the caregiver as an employee and engages a payroll company** to handle the financial and tax requirements of being an employer. SB-990 would specifically prohibit such an arrangement.

Availability of Caregivers and the Underground Economy

Elimination of the Referral Registry business model would **NOT** eliminate independent caregivers in CT. What it would do is:

1. Force many independent **caregivers to go underground**. More consumers would be hiring underground caregivers not subject to background checks and other Registry protections.
2. **Reduce compliance** with Federal and State **Income Tax Laws**, since many of these underground transactions would be for cash.
3. Cause many independent caregivers to leave the market entirely, rather than work for an Agency or go underground, thereby **reducing the availability of caregivers**, at a time when the demand for caregivers is rapidly expanding.

Many consumers, who could not afford the more expensive employee-based Agencies, would be forced to obtain limited, often insufficient, Title XIX caregiving services from, or be placed in facilities of, State-funded care sources, at an **ENORMOUS COST TO THE STATE**.

Effect of Potential Reversal of FLSA Court Decision

FLSA Regulations, that prevented employee-based homecare Agencies from taking advantage of FLSA minimum wage and overtime exemptions, were declared invalid by a D.C. Federal District Court in December, one week before they were to become effective. **This decision is being vigorously appealed by the Federal DOL**. If the decision is overturned, live-in homecare in CT through employee-based Agencies will become largely unaffordable, but **individuals and families will still be able to hire live-in caregivers directly without paying overtime**, and Registries will be able to assist them to find properly screened caregivers. **This is not the time to eliminate Registries as a choice.**

Testimony Submitted By Suzanne Bates, Policy Director for the Yankee Institute for Public Policy to the Labor Committee on HB 6784, 6875, 6877, 6932, 6933, SB 1037

March 5, 2015

The Yankee Institute for Public Policy is a Connecticut think tank that develops and advances policy solutions to promote a smart, limited government; fairness for taxpayers; and an open road to opportunity for all the people of our state.

I submit this testimony in opposition to HB 6784, 6875, 6877, 6932, 6933, and SB 1037.

Our opposition is not based on any objection to the benefits this bill proposes. The Yankee Institute encourages all businesses to offer these programs to their employees. We believe that employers offering this kind of assistance will attract a higher quality workforce, and will build loyalty amongst their employees.

Although we strongly believe that generous benefit programs are of value both to employers and employees alike, we do not believe that government officials should be in the business of micromanaging private sector employers.

Connecticut's tax and regulatory regime already relegates it to the bottom of many national lists of business friendliness – and has earned it a growing reputation for hostility to private enterprise. This reputation makes it more difficult to attract and retain employers, which in turn makes it harder for our state's residents to get jobs – and remain in the state. A friendlier climate to business would result in more jobs, thereby lowering the unemployment rate. This, in turn, offers job seekers and workers alike greater choice when it comes to employment – and greater flexibility and leverage when negotiating with employers.

Ultimately, these bills send an insulting message to businesses large and small across our state. They say that Connecticut's governing class does not trust you and does not believe that you are sincerely interested in the welfare of your employees. We believe this is the wrong message to send to Connecticut's business community and one that is likely to deter businesses and entrepreneurs from considering our state as a place to grow or start a business.

With a shrinking state population and economic growth that still lags behind the national average, we respectfully encourage this committee to work in partnership with employers, rather than in opposition to them. A sound and sustainable public policy requires government to relax a burdensome regulatory regime, rather than adding to it, thereby offering one more reason for businesses to locate in another, friendlier state.